84-1815

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ALEXANDER L. STEVAS,
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

LYNN M. HOFFMAN,

Petitioner,

vs.

ETI-QUETTE ASSAF LTD., ASSAF IMPORTS LTD., PINO-FIORI INC., YOSSI ASSAF, JOSEPH CUSATI, DENNIS DICK, KOBY KALEVKOF, and SHARON ALEXANDER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Must a private civil litigant allege and/or prove prior criminal convictions for the underlying predicate acts defined in 18 U.S.C. §1961(1) to sue under 18 U.S.C. §1964(c) (1970)?

LIST OF PARTIES

All parties appear in the caption of the case in the Court.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

No. _____

LYNN M. HOFFMAN, Petitioner,

v.

ETI-QUETTE ASSAF LTD., ASSAF IMPORTS LTD., PINO-FIORI INC., YOSSI ASSAF, JOSEPH CUSATI, DENNIS DICK, KOBY KALEVKOF, and SHARON ALEXANDER, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner, Lynn M. Hoffman, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on February 19, 1985.

OPINIONS BELOW

The decision of the Court of Appeals is not yet reported. The informal opinion of the Court of Appeals is unreported and appears in the Appendix hereto (A-i). The endorsement rendered by the District Court which is unreported also appears in the Appendix hereto (A-iv).

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on February 19, 1985. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1) (1976).

STATUTES INVOLVED

Several provisions of the Racketeer Influenced and Corrupt Organizations Act, ("RICO") 18 U.S.C. §§1961-1968 (1978) (as amended) (originally

promulgated as Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, §901(a), Oct. 15, 1970, 84 Stat. 941, and amended Pub. L. No. 95-575, §3(c), Nov. 2, 1978, 92 Stat. 2465; Pub. L. No. 95-598, Title III, §314(g), Nov. 6, 1978, 92 Stat. 2677; Pub. L. No. 98-473, Title II, §§901(g) 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub. L. No. 98-547, Title II, Oct. 25, 1984, 98 Stat. 2770; Pub. L. No. 98-473, Title II, §§302, 2301(a)-(c), Oct. 12, 1984, 98 Stat. 2040, 2192; Pub. L. No. 98-620, Title IV, §402(24)(A), Nov. 8, 1984, 98 Stat. 3359; Pub. L. No. 98-620, Title IV, §402(24)(B), Nov. 8, 1984 No., 98 Stat. 3359), in particular 18 U.S.C. 1961, 1962, and 1964 are as to their pertinent text, reproduced at the Appendix. (A-viii-x). The most relevant provisions of the statute to this petition are:

18 U.S.C. §1961(1) (1978):

> ..."racketeering activity" means (A) any act or threat involving... extortion...which is chargeable under State Law and punishable by imprisonment for more than one year;

18 U.S.C. §1964(c) (1970):

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit; including a reasonable attorney's fee.

STATEMENT OF THE CASE

On April 28, 1980, Eti-Quette Assaf Ltd., a New York corporation having its office care of Yosi Assaf, 127 West 79th Street, New York, New York, did acquire all right, title and interest in premises and building known as 860 Lexington

Avenue, New York, New York. It is conceded that the corporation was wholly owned and controlled by the respondent Yosi Assaf, as were the respondents Assaf Imports Ltd. and PinoFiori Inc. At the time of this acquisition the building consisted of several residential apartments, at least three of which were rent controlled, and commercial space on the lower levels of the building, in which the respondent Yosi Assaf through the respondent Assaf Imports Ltd. opened a ladies' shoe boutique. Petitioner was the leaseholder of Apartment 3, a rent controlled apartment at 860 Lexington Avenue. The building is located between East 64th and 65th Streets in Manhattan. At the time of the acquisition, the petitioner was paying a monthly rent of approximately $130, an extremely attractive rent for a most prime location.

The respondents Yosi Assaf and Joseph Cusati had been employed by Assaf Imports Ltd. since 1977. In June and July of 1981, the respondents Dennis Dick and Koby Kalevkof were employed by the respondent Assaf Imports Ltd.

On November 22, 1980, the respondent Yosi Assaf approached the petitioner and offered her $3,000 to vacate her apartment. When the petitioner hesitated to accept, Mr. Assaf attempted to intimidate the petitioner by threatening that services being provided to the tenants (already seriously deficient) could get much worse.

From December of 1980 through October of 1981, conditions deteriorated in the building to the extent that it was made uninhabitable. Services were finally restored in the latter part of October 1981 after the respondent Yosi

Assaf was held in criminal and civil contempt for failure to correct the violations and fined $3,000. Thereafter, on February 17, 1982, the respondent Dennis Dick brought false and malicious criminal charges of harassment and assault against the petitioner. On February 25, the respondent Joseph Cusati brought false and malicious criminal charges of assault and harassment against the petitioner. On March 22, 1982, the respondent Yosi Assaf brought false and malicious criminal charges of harassment, menacing and criminal mischief against the petitioner. On March 30, 1982, the respondent Sharon Alexander brought false and malicious criminal charges of assault, harassment and criminal trespass against the petitioner. On April 14, 1982, the respondents Sharon Alexander, Koby Kalevkof and Yosi

Assaf had false and malicious criminal charges of criminal trespass and petit larceny brought against the petitioner. Finally, on May 7, 1982, the respondent Dennis Dick had false and malicious criminal charges of harassment brought against the petitioner. As a result of the false and malicious criminal charges brought by the respondents Alexander, Kalevkof and Assaf against the petitioner on April 14, 1982, the petitioner was arrested on the evening of April 13, 1982, and held until the morning of April 15, 1982, and forced to spend the aforesaid period incarcerated in the city jail. As a result of the false and malicious criminal charges brought against the petitioner by Dennis Dick on May 7, 1982, the petitioner was once again arrested and held for an entire day in the city jail on Riker's Island.

Further attempts to have the petitioner arrested were unsuccessful. Attempts were also made by the respondent Yosi Assaf to have the petitioner's minor son arrested.

During the pendency of the criminal charges in the New York City Criminal Court, petitions for eviction were brought in the New York City Civil Court by the respondent Yosi Assaf on the grounds of all the criminal charges previously pending against the petitioner. The objective and end result of the onslaught of criminal charges and civil litigation brought on by the several respondents was the extortion of the petitioner's leasehold in the rent controlled Apartment 3 at 860 Lexington Avenue.

In a Stipulation entered into on October 1, 1982, the petitioner agreed to vacate the premises of Apartment 3 at

860 Lexington Avenue in return for a cash payment of $10,000, out of which $655.75 was applied by Yosi Assaf to an arbitration judgment award for rent withheld during 1981. On November 9, 1982, barely one month after the Stipulation by which the petitioner agreed to vacate the apartment was entered into, all criminal charges pending against the petitioner brought by the several respondents were dismissed in the Criminal Court of the City of New York, County of New York, Part AP9.

The Complaint fully and meticulously alleged the illegal conduct of the several respondents and the resultant injuries to the petitioner herein. Briefly, it was alleged that the respondent Yosi Assaf as the sole shareholder and an employee of the three corporate respondents, Eti-Quette Assaf Ltd.,

Assaf Imports Ltd. and Pino-Fiori Inc., in conspiracy with the other respondents, Joseph Cusati, Dennis Dick, Koby Kalevkof and Sharon Alexander, who were either employees of the corporation(s) or associates of Yosi Assaf, did conspire and did commit violations of 18 U.S.C. §1962(b), (c) and (d). It was alleged that the respondent Yosi Assaf through a pattern of racketeering activity maintained an interest in or control of enterprises engaged in and whose activities effected interstate or foreign commerce, to wit, the several corporate respondents, all being enterprises engaged in the foreign and interstate import and export of retail garments and shoes. It was further alleged that the several respondents, who were employed by or associated with the aforesaid enterprises engaged in

interstate and foreign commerce, did conduct and participate both directly and indirectly in the conduct of the enterprises' affairs through a pattern of racketeering activity. Finally, it was alleged that the several respondents did conspire to engage in the aforesaid conduct which is in itself a violation of 18 U.S.C. §1962(d). Through the means of the various acts of extortion the petitioner was caused to suffer severe injuries, in that she was falsely arrested and imprisoned on several occasions by the several individual respondents herein, these acts constituting acts of extortion perpetrated by these individual respondents and designed to and which did eventually result in the petitioner's loss of her leasehold interest in an apartment in the aforesaid building at a great financial loss, and

injuries compensable under 18 U.S.C. 1964(c). Under New York State Penal Law, larceny by extortion is punishable for more than one year.

The Complaint was filed in the lower court, and Answers were duly interposed on behalf of the three corporate respondents and Yosi Assaf, all represented by the same counsel. Separate counsel interposed an Answer on behalf of the respondent Dennis Dick. The remaining respondents are either in default or have not been served.

All answering respondents raised an affirmative defense that the Complaint failed to state a cause of action. Although the respondents were directed by the District Court to file Motions for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, a Motion was made on behalf of the

respondents Eti-Quette Assaf Ltd., Assaf Imports Ltd., Pino-Fiori Inc. and Yosi Assaf pursuant to F.R.C.P. Rule 12(b)(1) and (6) for dismissal of the action. Petitioner's opposition to the Motion was served and filed in January of 1984. The Motion was joined by the respondent Dennis Dick in January of 1984, after opposition papers were served. By endorsement dated September 20, 1984, (A-iii) the District Court judge dismissed the case solely on the authority of Sedima, S.P.R.L. v. Imrex Co. Inc., 741 F.2d 482 (2d Cir. 1984), cert. granted ___ U.S. ___; 105 S.Ct. 901, 83 L.Ed.2d 917 (1/14/85); and Furman v. Cirrito, 741 F.2d 524 (2d Cir. 1984), that the petitioner had failed to allege that the respondents had criminal convictions for the predicate acts underlying the action. The Court of Appeals affirmed (A-i).

REASON FOR GRANTING THE WRIT

The Decision Below incorrectly interpreted 18 U.S.C. 1961(1)(A) as requiring prior criminal convictions for the predicate acts underlying a RICO claim brought by a private litigant and conflicts with the Decisions of other Courts of Appeals.

This Court has already heard argument in two cases which, once determined, will hopefully be dispositive of the issue here presented on appeal. On April 17, 1985, argument was heard in the cases of Sedima, S.P.R.L. v. Imrex Co., Inc., 741 F.2d 482 (2nd Cir. 1984), cert. granted ___ U.S. ___, 105 S.Ct. 901, 83 L.Ed.2d 917 (U.S. 84-648, Jan. 14, 1985), and Haroco Inc. v. American National Bank & Trust Co. of Chicago,

747 F.2d 384 (7th Cir. 1984), cert. granted ____ U.S. ____, 105 S.Ct. 902 (1/14/85). Petitioner seeks to protect her record by petitioning this Court for Writ of Certiorari pending the decision in Sedima, 714 F.2d 482, which appeal has raised the precise point before this Court and appealed herein.

The sole reason and authority for dismissal of the Complaint in the instant case by both the District Court and Court of Appeals was that it failed to allege the existence of prior criminal convictions for the predicate acts underlying the RICO claim. This requirement, which is clearly not derived from a plain reading of the language of 18 U.S.C. 1961(1)(A), has been mandated by the interpretation of the statute by a divided panel in Sedima, 741 F.2d 482. In so ruling, the Court of Appeals

has violated the parameters of Article III of the United States Constitution and usurped the authority of Congress' lawmaking powers provided for in Article I of the United States Constitution.

By means of a most convoluted reasoning process, the U.S. Court of Appeals for the Second Circuit has, in Sedima, 741 F.2d 482, read into the RICO statute a requirement of prior criminal convictions. The language of §§1964(c), 1962(b), (c) and (d), and 1961(1)(A) is unambiguous and clear. Prior convictions for predicate acts alleged by a private civil litigant are not required. To impose such a standard also disregards legislative history and conflicts with most of the decisions which have addressed the issue.

An analysis of the language of the statute first brings us to §1964(c), which reads:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

Neither the District Court nor the Court of Appeals ruled that the Complaint failed to meet the requirements of §1964(c) other than imposing the prior criminal conviction rule. Therefore, we are led to §§1962(b), (c) and (d). Sections (b) and (c) both refer to violations of the statute by virtue of committing certain acts through a "pattern of racketeering activity." Section 1962(d) encompasses conspiracies to violate §1962(a), (b) or (c). All violations of this chapter therefore hinge on

unlawful activities perpetrated through a "pattern of racketeering activity" which is defined at §1961(5):

> ...pattern of racketeering activity requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity...

At this juncture we finally reach the gates to the Emerald City and address the language defining "racketeering activity" at §1961(1)(A), which in its pertinent parts reads:

> (1) "Racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is

> chargeable under State law and punishable by imprisonment for more than one year... [Emphasis supplied]

The focal point of analysis is therefore directed towards the words "acts or threats chargeable under State law." These words, under accepted law of statutory construction, must be defined according to their "ordinary meaning." Rusello v. United States, 104 S.Ct. 296, 299 (1983). Using the approach in Rusello, "-able" is defined as meaning "capable of, fit for, or worthy of." Webster's Ninth New Collegiate Dictionary (1983). The plain language would therefore dictate that a RICO defendant who has committed acts or threats chargeable under state law is merely a person susceptible to criminal prosecution for those acts or threats

and needn't be one convicted for their commission.

Even the majority of the panel which decided Sedima, 741 F.2d 482 (1984) at 499-500, determined it "conceivable" that Congress might have intended the clear meaning of the plain language at issue:

> As for the language "any act which is indictable" (or "chargeable"), conceivably Congress meant by the choice of these words to suggest either that indictments or, in the case of certain state felonies informations are not required, since the acts need only be "indictable" or "chargeable." [emphasis added]

In all due deference to the panel in Sedima, that conception of Congressional intent is the ONLY reasonable one to be drawn, and their inquiry should have ended at that conclusion as to the

interpretation of the aforesaid key language.

But no--the panel, being more concerned with reassessing "the costs and benefits of a dramatically expansive... tool for combatting organized crime (United States v. Turkette, 452 U.S. 576 at 586-87, 101 S.Ct. 2524 at 2530, 69 L.Ed.2d 246), and having apparently determined the costs too high, set about the task of restricting the application of civil RICO by imposing requirements for pleading clearly not contained in the language of the statute itself. The Sedima panel, 741 F.2d 482 at 500, felt compelled to invent a means to the ends of their concerns:

> But a plausible alternative view of the words "indictable" and "chargeable", found in RICO's definitional section, is that Congress did not intend to

> give civil courts power to determine whether an act is "indictable" in the absence of a properly returned indictment or "chargeable" absent an information. Courts do not traditionally look at a given set of facts--proved by a preponderance of the evidence only--and say that these facts make out acts which are "indictable" or "chargeable".

This statement as to what is a "plausible" alternative view is both unnecessary legal sophistry and at variance with the normal rules of construction. "[A]bsent clear evidence of contrary legislative intention, a statute should be interpreted according to its plain language." United States v. Apfelbaum, 445 U.S. 115, 121 (1980). Moreover, there is no clear evidence of contrary legislative intention.

When Congress required a conviction as part of the legislative scheme of the

Organized Crime Control Act, it knew how to do so. Title X, 18 U.S.C. §§3575-3578 (1970), refers to "conviction[s]" at many places. See, e.g., 18 U.S.C. §§3575(d), (e), and (g), 3576 and 3577. Cf. Ianelli v. United States, 420 U.S. 770, 786-89 (1975) (The Organized Crime Control Act is a "carefully crafted piece of legislation") (construing Title VII in light of Titles IX and X).

The majority in Sedima chose to ignore what is obvious, i.e., the Congress was acutely aware of the expansive provisions of RICO and clearly did not intend that a prior criminal conviction for predicate acts be a prerequisite to bringing a civil RICO claim. In considering an amendment proposed by then Congressman Mikva to impose treble damages for defendants against plaintiffs bringing frivolous suits (Sec. 116,

Cong. Rec. 35342-43 (1970)), the majority in Sedima refused to infer that the aforesaid proposed amendment was evidence of Congressional awareness of the expansive nature of the RICO provisions (Sedima, 741 F.2d at 490, n. 22). This is but one example of the majority's single-mindedness in arriving at their conclusion. Its conclusions as to legislative intent are derived from first interpreting the language as being ambiguous and then, and only then, reaching its conclusions concerning intent based on that "elusive" ambiguity. This reasoning fails utterly.

Justice Cardamones' thoughtful and well-reasoned dissent in Sedima, 741 F.2d at 504, underscores both the necessity for reversal of the majority holding and the compelling reason for granting of this writ:

> Not only does the majority turn the ordinary rules of statutory construction on their head by ignoring the plain meaning of the statutory language, but it also ignores the sound policy reasons for permitting civil RICO cases to proceed absent prior convictions for the predicate acts. In my view, the Civil RICO provisions mean just what they say. Because these and other considerations have convinced me that the majority has crossed the line and trespassed into an area exclusively reserved for Congress, I dissent.

Courts of Appeals of most other Circuits, as well as District Courts throughout the United States which have addressed this issue, have concluded that no requirement of prior criminal convictions is contained in the language of RICO or in the legislative history of Congressional intent. E.g, Bunker Ramo

Corp. v. United Business Forms, Inc., 713 F.2d 1272 (7th Cir. 1983); USACO Coal Co. v. Carbomin Energy, Inc., 689 F.2d 94 (6th Cir. 1982); Poling v. Morgan, 598 F.Supp. 686 (D.Ariz. 1984); Bennett v. E.F. Hutton Co., 597 F.Supp. 1547 (N.D.Ohio 1984); Ora Corp. v. Vinson, 596 F.Supp. 1546 (D.S.C. 1984); Maxwell v. Southwest National Bank, Wichita, Kan., 593 F.Supp. 250 (D.Kan. 1984); Atlantic Federal Savings and Loan Association of Fort Lauderdale v. Dade Savings and Loan Association, 592 F.Supp. 1089 (S.D.Fla. 1984); In re Longhorn Securities Litigation, 573 F.Supp. 255 (W.D.Okla. 1983); Barker v. Underwriters at Lloyd's, London, 564 F.Supp. 352 (E.D.Mich. 1983); Lode v. Leonardo, 557 F.Supp. 675 (N.D.Ill. 1982); Kaushal v. State Bank of India, 556 F.Supp. 576 (N.D.Ill. 1983);

Mauriber v. Shearson/American Express Inc., 546 F.Supp. 391 (S.D.N.Y. 1982); State Farm Fire & Casualty Co. v. Caton, 540 F.Supp. 673 (N.D.Ind. 1982); Glusband v. Benjamin, 530 F.Supp. 240 (S.D.N.Y. 1981); Heinold Commodities, Inc. v. McCarty, 513 F.Supp. 311 (N.D.Ill. 1979); Parnes v. Heinold Commodities, Inc., 487 F.Supp. 645 (N.D.Ill. 1980); Farmers Bank of Delaware v. Bell Mortgage Corp., 452 F.Supp. 1278 (D.Del. 1978).

It is crystalline that civil RICO contains no requirement of prior criminal conviction for predicate acts. The courts below in dismissing and affirming the dismissal of the instant case have relied on a rule imposed by the majority in Sedima, 741 F.2d 482, the basis and reasoning for which is devoid of any viable defense. This Court has a

clear-cut basis and, moreover, a mandate to reverse the decisions below dismissing the Complaint herein by virtue of the Sedima rule, a rule which runs contrary to sound and recognized principles of judicial construction and interpretation.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Second Circuit.

Respectfully submitted,

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May 14, 1985

APPENDIX

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 19th day of February, one thousand nine hundred and eighty-five.

Present:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE WILLIAM H. TIMBERS,

HONORABLE RICHARD J. CARDAMONE,
Circuit Judges.

----------x

LYNN M. HOFFMAN,

Plaintiff-Appellant,

- against -

84-7858

ETI-QUETTE ASSAF LTD., et al.,

Defendants-Appellees.

----------x

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. For substantially the reasons stated by Judge Lowe in her endorsement dated September 2, 1984, we affirm the dismissal of this suit claiming violations of the Racketeer Influenced and Corrupt Organizations Act. As the district court noted, this case is controlled by Sedima v. Imrex Co., 741 F.2d 482 (2d Cir. 1984), cert. granted,

53 U.S.L.W. 3506 (U.S. Jan 14, 1985) (No. 84-648), which remains the law in this circuit pending its consideration by the Supreme Court.

2. Appellees have asked this court to award them just damages and costs pursuant to FRAP 38. Because we find that appellant had the right to protect her record by taking this appeal, we deny appellees' motion.

(WILFRED FEINBERG)
WILFRED FEINBERG, Chief Judge

(WILLIAM H. TIMBERS)
WILLIAM H. TIMBERS,

(RICHARD J. CARDAMONE)
RICHARD J. CARDAMONE,

Circuit Judges.

ENDORSEMENT

LYNN M. HOFFMAN v.

ETI-QUETTE ASSAF LTD., et al.

83 Civ. 2812 (MJL)

This is an action for alleged violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§1961-1968, (1982) and the common law of New York. Plaintiff contends that defendants conspired through a pattern of harrassment, criminal behavior and racketeering to illegally force her to relinquish her right, title and ownership to a rent controlled apartment. Defendants Yossi Assaf, Eti-Quette Assaf Ltd, Assaf Imports Ltd and Pino-Fiori, Inc. move to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(1) and (6).

On April 28, 1980, defendant Yossi Assaf, as the sole stockholder of defendant Eti-quette Assaf Ltd., purchased

the property known as 860 Lexington Avenue. At the time of the purchase plaintiff and several other persons leased apartments on the upper floors of the building. Plaintiff alleges that from April 28, 1980 to date, defendants committed, inter alia six separate crimes of extortion which resulted in the lack of basic services for the apartments, as well as the false arrest, false imprisonment and malicious prosecution of plaintiff. On October 1, 1982, plaintiff and Mr. Assaf appeared in the New York City Landlord Tenant Court, at which time a settlement between plaintiff and Assaf was reached. The settlement provided for a cash disbursement to plaintiff in return for her vacating the premises. Four months after this settlement was entered into, plaintiff commenced the present action.

Recently, the Second Circuit has clearly articulated the law with respect to private civil RICO actions. See Sedima v. Imrex Comp., et al., No. 83-7965 (2d Cir. 1984); Furman, et al. v. Cirrito, et al., No. 84-7113 (2d Cir. 1984). The case of Sedima is particularly applicable to the case at bar. In Sedima, the Second Circuit held that in order to bring a private civil RICO action there must be criminal convictions on the underlying predicate felony offenses. Sedima, supra, at page 5576. In the present action plaintiff has failed to allege, and the record contains no evidence that defendants have criminal convictions for the predicate acts underlying the action. The Court therefore, dismisses plaintiff's RICO claims. In the absence of valid federal claim, plaintiff's remaining claims must

also be dismissed. United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966). Defendants' motion is granted and the case dismissed.

It Is So Ordered.

Dated: New York, New York
September 20, 1984

(Mary Johnson Lowe)
United States District Judge

18 U.S.C. §1961

As used in this chapter -

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

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(b) It shall be unlawful for any person through a pattern of racketeering

activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activ-ities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b) or (c) of this section.

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(c) Any person injured in his

business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.